

AGREEMENT FOR
CONTRACTOR SERVICES

THIS AGREEMENT made and entered into on the 11th day of January, 2005, by and between LEON COUNTY, FLORIDA, a charter county and political subdivision of the state of Florida, hereinafter called the Owner, and SANDCO, INC., herein called the Contractor.

For the mutual covenants, conditions, and considerations set forth herein, the parties hereto do hereby agrees as follows:

ARTICLE I
EXTENT OF AGREEMENT

The Contractor accepts the relationship of trust and confidence established between him and the Owner by this Agreement and is working as a Contractor through a lump sum agreement as set forth herein. The Contractor covenants to furnish his best skill and judgement as the Contractor with specific expertise in the planning and construction of transportation projects, and to cooperate with the Engineer(s) in furthering the interest of the Owner. He agrees to furnish efficient business administration and superintendence and use his best efforts to complete the project in the best and soundest way and in the most expeditious and economical manner consistent with the interest of the Owner.

- 1.1 The Contractor and the Engineer shall work jointly during the pre-construction phase and through final construction completion and shall be available thereafter should additional services be required. The Engineer will provide leadership during the pre-construction phase with support from the Contractor who shall control all matters relating to construction.
- 1.2 This Agreement for the reconstruction/widening of Orange Avenue, Leon County, Florida, between the Owner and the Contractor supersedes any prior negotiations, representations, or agreements. When drawings, specifications and other descriptive documents defining the work to be included under a construction authorization, they shall be identified in the construction authorization issued by the Owner. This Agreement shall not be superseded by any provisions of the documents for construction and may be amended only by written instrument signed by both Owner and Contractor.
- 1.3 The performance of Leon County of any of its obligations under this agreement shall be subject to and contingent upon the availability of funds lawfully expendable for the purposes of the agreement for the current and any future periods provided for within the bid specifications.
- 1.4 Definitions

Project:

The Project is the total work to be performed under this Agreement. The Project consists of the reconstruction of Orange Avenue from South Monroe Street to Blair Stone Road to include road construction, curb and gutter, sidewalk, landscaping, water and sanitary sewer facilities' relocation, stormwater drainage systems, and stormwater management facilities identified in the bid plans and specifications. The Contract Plans were designed by Genesis Group, and the Technical Specifications for roads and stormwater systems were a joint effort of Genesis Group, Parsons Brinkerhoff Construction Services, and the Leon County Public Works Department. Technical Specifications for Water Utility were provided by the City of Tallahassee Water and Sanitary Sewer departments, and the Water and Sanitary Sewer systems relocation design were a joint effort of City of Tallahassee and Genesis Group.

Except as modified by the bid instructions, the construction procedure, materials, equipments, and the technical specifications listed herein, shall be in accordance with the following specifications and contract documents:

- a. All standards and specifications called out on the construction plans.
- b. Manual on Uniform Traffic Control Devices (MUTCD), Federal Highway Administration,

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Latest Edition.

- c. Orange Avenue (Phase 2) Supplemental Specifications.
- d. City of Tallahassee Technical Specifications for Water Utility - Gravity Sewers and Water Distribution Systems

In the event of any conflict between the Florida Department of Transportation's standard specifications and the specifications of this contract the specifications of this contract shall govern.

Owner:

Leon County, Florida.
Public Works Department
2280 Miccosukee Road
Tallahassee, Florida 32308

Contractor:

Sandco, Inc.
2811-E Industrial Plaza Drive
Tallahassee, Florida 32301

Engineers:

Genesis Group
2507 Calloway Road, Suite 100
Tallahassee, Florida 32303

Parsons Brinckerhoff Construction Management
2633 Mahan Drive
Tallahassee, Florida 32308

1.4 Owner's Project Budget.

The sum total of all of the Owner's funds budgeted for the development of the project including the construction budget, Owner's Contingency, the Contractor's fees and architect's and engineer's design fees, and all other fees, furnishings and equipment and other costs necessary to develop the project and land acquisition.

ARTICLE 2
CONTRACTOR'S SERVICES

The Contractor is agreeing to provide all of those services normally performed by a Contractor and necessary to complete the successful construction of the project. The detailed description of services which follows is intended to assist the Owner in understanding the scope of those services and is not designed to be totally complete or exhaustive.

2.1 Narrative Reporting Subsystem.

- (1) The Contractor shall prepare written reports as described hereunder. All reports shall be in 8 1/2" x 11 " format.
- (2) The Narrative Reporting Subsystem shall include the following report:
 - (a) A Monthly Construction Progress Report during the construction phase

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summarizing the work of the various subcontractors. This report shall include information from the weekly job site meetings as applicable such as general conditions, long lead supplies, current deliveries, safety and labor relations programs permits, construction problems and recommendations, and plans for the succeeding month.

2.1.2 Scheduled Control Subsystem.

- (1) **Construction Schedule:** Within thirty (30) days after the date of the Owner's issuance of Notice to Proceed, for the construction phase, the Contractor shall prepare and submit to the Owner a construction schedule graphically depicting the activities contemplated to occur as a necessary incident to performance of the work required to complete the project, showing the sequence in which the Contractor proposes for each activity to occur and duration (dates of commencement and completion, respectively) of each activity. Failure of the Contractor to develop and submit a construction schedule as aforesaid shall be sufficient grounds for the Owner to find the Contractor in substantial default and that sufficient cause exists to terminate the contract or to withhold any payment.

2.2 Construction Phase.

- (1) **Contractor's Staff:** The Contractor shall maintain sufficient off site support staff, and competent full time staff at the Project site authorized to act on behalf of the Contractor to coordinate, inspect and provide general direction of the work and progress of the subcontractors and he shall provide no less than those personnel during the respective phases of construction as outlined in the Bid # BC-08-17-04-47. The Contractor shall not change any of those persons named unless mutually agreed to by the Owner and Contractor. In such case, the Owner shall have the right of approval of the qualifications of replacement personnel.
- (2) **Bond:** In accordance with the provisions of Section 255.05, Florida Statutes, the Contractor shall provide to the Owner, on forms approved by the Owner, a 100% Performance Bond and a 100% Labor and Material Payment Bond each in an amount not less than the total price. The surety shall be rated as B+ or better by Best's key guide latest edition.
- (3) **Quality Control:** The Contractor shall develop and maintain a program, acceptable to the Owner and Engineer, to assure quality control of the construction. The Contractor shall be responsible for and supervise the work of all subcontractors, providing instructions to each when their work does not conform to the requirements of the plans and specifications and he shall continue to exert his influence and control over each subcontractor to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the work. Should a disagreement occur between the Contractor and the Engineer over the acceptability of the work, the Owner, at its sole discretion, shall have the right to determine the acceptability.
- (4) **Subcontractor:** The Contractor shall solely control the subcontractors. The Contractor shall negotiate all change orders, field orders and request for proposals, with all affected subcontractors and shall review the costs of those proposals and advise the Owner and Engineer of their validity and reasonableness, acting in the Owner's best interest, prior to requesting approval of each change order from the Owner. Before any work is begun on any change order, a written authorization from the Owner must be issued. However, when there is an eminent threat to health and safety, and Owner's concurrence is impractical, the Contractor shall act immediately to remove the threats to health and safety and shall subsequently fully inform Owner of all such action taken. The Contractor shall also carefully review all shop drawings and then forward the same to the Engineer for review and actions. The Engineer will transmit them back to the Contractor who will then issue

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the shop drawings to the affected subcontractor for fabrication and revision.

- (5) **Permits:** The Contractor shall secure all necessary building permits from the Permitting Authorities and all necessary utility connection permits, the cost of which will be considered a direct cost item and shall be considered a reimbursable cost item. The Owner shall fully cooperate with the Contractor where necessary.
- (6) **Job Site Requirements:**
 - (a) The Contractor shall provide for each of the following activities as part of his General Conditions & Services and Fee:
 - 1. Maintain a log of daily activities, including manpower records, weather, delays, major decisions, etc.
 - 2. Maintain a roster of companies on the project with names and telephone numbers of key personnel including MBE's.
 - 3. Establish and enforce job rules governing parking, clean-up, use of facilities and worker discipline.
 - 4. Provide labor relations management for a harmonious, productive project.
 - 5. Provide and administer a safety program for the project to meet OSHA requirements. Monitor for subcontractor compliance without relieving them of responsibilities to perform work in accordance with the best acceptable practice.
 - 6. Provide and administer a quality control program.
 - (b) The Contractor shall provide personnel and equipment or shall arrange for separate subcontractors to provide each of the following:
 - 1. Services of independent testing laboratories and provide the necessary testing of materials to ensure conformance to contract requirements.
 - 2. Printing and distribution of all required bidding documents and shop drawings, including the sets required by the Permitting Authority's inspectors.
- (7) **Job Site Administration:** The Contractor shall provide job site administrative functions during construction to assure proper documentation, including but not limited to the following:
 - (a) **Payments to Subcontractors:** Develop and implement a procedure for review, processing, and payment of applications by subcontractors for progress and final payments.
 - (b) **Substantial Completion:** If the Contractor wishes the Engineer to conduct a substantial completion inspection in conjunction with the Contractor's own forces, the Engineer will issue certificate of substantial completion when work on the Engineer's substantial punch list has been accomplished.
 - (c) **Final Completion:** Monitor the performance on the completion of the project and provide notice to the Owner and Engineer that the work is ready for final inspection. Secure and transmit to the Owner, through the Engineer, all required

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guarantees, affidavits, releases, bonds and waivers, manuals, record drawings, and maintenance books including the Final Completion form.

- (d) Record Drawings: The Contractor shall monitor the progress of his own forces or his subcontractors on marked up field prints which at project completion shall be sent to the Engineer and Owner.
- (8) The Contractor shall catalog operational and maintenance requirements of equipment to be operated by maintenance personnel and convey these to the Owner in such a manner as to promote their usability. The Contractor shall provide operations training, in equipment use, for building operators.

The Contractor shall secure required guarantees and warranties, assemble and deliver same to the Owner in a manner that will facilitate their maximum enforcement and assure their meaningful implementation.

- (9) Warranty:

The Contractor warrants that all labor and materials conform to the plans and specifications and that all work has been performed in a competent and workmanlike manner and consistent with good building practices. The Contractor further warrants that all materials and equipment are new and of good quality and free from defects. With respect to the same work, the Contractor further agrees to correct all work found by the Owner to be defective in material and workmanship or not in conformance with the Drawings and Specifications for a period of one year from the Date of Substantial Completion or for such longer periods of time as may be set forth with respect to specific warranties contained in the trade sections of the Specifications. The Contractor shall collect and deliver to the Owner any specific written warranties given by others as required by the Contract documents.

Except for the warranties stated, Contractor makes no other warranties expressed or implied and ANY IMPLIED OR STATUTORY WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY ARE EXPRESSLY DISCLAIMED.

ARTICLE 3
OWNER'S RESPONSIBILITIES

- 3.1 Owner's Information: Upon request, the Owner shall provide information regarding his requirements for the project to the Contractor
- 3.2 Owner's Representative: The Owner shall designate one or more representatives who shall have the authority to represent the Owner. The Owner's Representative could be someone who does not have any background or experience in construction projects and who has no special training or experience or knowledge of construction.
- 3.3 Site Survey and Reports: The Owner shall provide to the Contractor and/or the Engineer all surveys in his possession describing the physical characteristics, soil reports, subsurface investigations, utility locations, easements and deed restrictions and legal descriptions.
- 3.4 Approvals and Easements: The Owner agrees to pay for the expense for any disputes relating to the ownership and use of the property which might arise during the course of construction.
- 3.5 Lines of Communication: The Owner and Engineer may communicate with the subcontractors or suppliers but only for informational purposes. The Owner and Engineer shall not attempt to direct the work of any subcontractor or interfere with work of the Contractor or any subcontractor.

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- 3.6 Permitting and Code Inspections: The Contractor recognizes and agrees to coordinate with the Permitting Authorities and the Owner shall assist in such coordination to the extent practicable.

ARTICLE 4
PERMITTING AND INSPECTION

Before Construction can begin, it will be necessary for the Contractor to ensure that all necessary permits are obtained. In addition, construction may be inspected for code compliance by inspectors working for the Permitting Authority.

- 4.1 Code Inspections: All projects require detailed code compliance inspection during construction in disciplines determined by the Permitting Authority. These disciplines normally include, but are not necessarily limited to, structural, mechanical, electrical, plumbing and general building.

All inspections shall be made for conformance with the applicable building codes.

Cost for all re-inspections of work found defective and subsequently repaired shall be borne by the Contractor.

ARTICLE 5
SCHEDULE, TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

- 5.1 A project substantial completion date for completion of the construction in accordance with the project schedule for occupancy by the Owner, shall also be established. The Contractor agrees to complete the construction in accordance within the agreed upon substantial completion date. The substantial completion date shall be 814 calendar days after the "Notice to Proceed." The Contractor acknowledges that failure to complete the project within the construction time set forth in the approved schedule will result in substantial damages to the Owner. If the work to be performed under this Contract is not completed within the time set forth above, or within such extra time as may be granted by the County, the Contractor shall be deemed to be in default.

The liquidated damages will be set based on the bid price and according to Section 8-10 of the FDOT's Standard Specifications for Road and Bridge Construction, 2000 Edition.

Permitting the Contractor to continue and finish the work or any part of it after the expiration of the contract time allowed, including extensions, if any, shall in no way act as a waiver on the part of County of the liquidated damages due under the contract.

ARTICLE 6
PRICE FOR CONSTRUCTION

- 6.1 The Total Price for the project as described by the contract documents is \$27,383,246.63 as bid by the Contractor. Such Price shall only be subject to modification for changes in the project as provided in Article 7.
- 6.2 The Total Price will include those applicable taxes in the cost of the project which are legally enacted at the time the Total Price is established. Should any taxes be enacted after the Total Price then the Total Price shall be increased by the same amount.

ARTICLE 7
CHANGE IN THE PROJECT

- 7.1 Change Orders: The Owner, without invalidating this Agreement, may order changes in the Project within the general scope of this Agreement consisting of additions, deletions, or other revisions, with the Total Price and the Construction Completion Date being adjusted accordingly. All changes in the Project shall be authorized by Change Order signed by the Owner before the

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change is implemented.

- 7.1.1 (1) In the event the Contractor encounters on the site material reasonably believed to be hazardous, petroleum or petroleum related products, or other hazardous or toxic substances the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and the Engineer in writing. The work in the affected area shall not thereafter be resumed except by written agreement of the Owner and the Contractor if in fact the material or substance has not been rendered harmless. The Work in the affected area shall be resumed when the site has been rendered harmless, by written agreement of the Owner and Contractor.

7.2 Claims for Additional Cost or Time.

The Contractor shall submit a change order for all claims for additional cost or time.

If the Contractor is delayed at any time in the progress of the work by any act or negligence of the Owner or the Engineer, or of any employee of either or by any separate Contractor employed by the Owner or by any changes ordered in the work necessitated by labor disputes, fire, unavoidable casualties or any causes beyond the Contractor's control or by delay authorized by the Owner pending resolution of disputes, and such delay extends the completion date, the Substantial Completion shall be extended by Change Order for such reasonable time as the Owner may determine.

Only delays which are determined to extend the critical path for the schedule for constructing the project will result in a time extension.

7.3 Minor Changes In the Project.

The Engineer shall have authority to order minor changes in the Project not involving a change in cost or an extension of the Construction Completion Date and not inconsistent with the intent of the Drawings and Specifications and the Contractor shall abide by and perform such minor changes. Such changes shall be effected by written order. Such changes shall be approved by the Owner and Engineer.

7.4 Emergencies.

In any emergency affecting the safety of persons or property, the Contractor shall act at his discretion, to prevent threatened damage, injury or loss. Any increase in the Total Price or extension of time claimed by the Contractor on account of emergency work shall be determined as provided in Article 8. However, whenever practicable, the Contractor shall obtain verbal concurrence of the Owner where the act will or may affect cost or construction schedule.

ARTICLE 8
PAYMENTS TO THE CONTRACTOR

- 8.1 Monthly Statements - The Contractor shall submit to the Owner a sworn statement, along with the cost reports required, showing in detail all monies paid out, costs accumulated or cost incurred on account of the Cost of the Project during the previous period. This data shall be attached to the partial pay request form. Payment by the Owner to the Contractor of the statement amount shall be made within twenty (20) days after approval of the Engineer and submitted to the Owner. Ten percent (10%) retain age shall be held at the discretion of the Owner and Engineer, the 10% retain age may be reduced to 5% at 75% completion of the work.
- 8.2 Final Payment - Final payment constituting the unpaid balance of the cost of the Project and the Contractor's fee, shall be due and payable within 45 days after the Project is delivered to the Owner, finished and ready for beneficial occupancy, or when the Owner occupies the Project,

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whichever event first occurs provided that the Project be then substantially completed and this agreement substantially performed. However, if there should remain work to be completed, the Contractor and the Engineer shall list those items prior to receiving final payment and the Owner may retain a sum equal to 200% of the estimated cost of completing any unfinished work and the applicable portion of the Contractor's retain age, provided that said unfinished items are listed separately and estimated cost of completing any unfinished items are likewise listed separately. Thereafter, Owner shall pay to Contractor, monthly, the amount retained from each incomplete item after each of said items is completed.

- 8.3 Payments to Subcontractors - The Contractor shall promptly, but not later than 10 days after receipt of payment from the Owner, pay all the amount due subcontractors less a retain age of ten percent (10%). If there should remain items to be completed, the Contractor and Engineer shall list those items required for completion and the Contractor shall require the retain age of a sum equal to 200% of the estimated cost of completing any unfinished items, provided that said unfinished items are listed separately and the estimated cost of completing any unfinished items likewise listed separately. Thereafter, The Contractor shall pay to the subcontractors, monthly, the amount retained for each incomplete item after each of said items is completed. Before issuance of final payment without any retain age, the subcontractor shall submit satisfactory evidence that all payrolls, material bills and other indebtedness connected with the Project have been paid or otherwise satisfied, warranty information is complete, as-built markups have been submitted and instruction for the Owner's operating and maintenance personnel is complete. Final payment may be made to certain select subcontractors who work is satisfactorily completed prior to the total completion of the Project but only upon approval of the Owner.
- 8.4 Delayed Payments by Owner - If the Owner shall fail to pay the Contractor within 20 days after the receipt of an approved payment request from the Contractor, then the Contractor may, upon fourteen (14) additional days advance written notice to the Owner and the Engineer stop the Project until payment of the Amount owing has been received; provided that the payment request has been submitted in sufficient detail to comply with the guidelines of the Office of the Clerk of the Circuit Court for Leon County. In the event that there is a dispute in the amount of the pay request, then only the disputed amount shall be held until resolved and the undisputed amount shall be paid within the time limits as stated within this paragraph. If undisputed amounts are timely paid, then the Contractor shall not stop the Project in any fashion and the progress of the project shall not be interrupted. Both parties agree that best efforts be made to resolve the disputed amount.
- 8.5 Payment for Materials and Equipment - Payments will be made for material and equipment not incorporated in the work but delivered and suitable stored at the site (or another location, subject to prior approval and acceptance by the Owner on each occasion). 8.6 Withholding Payments to Subcontractors - The Contractor shall not withhold payments to subcontractors if such payments have been made to the Contractor. Should the need, as solely determined by the Contractor, to withhold payments to subcontractors occur, for any reason, the Contractor shall immediately return such monies to the Owner, adjusting pay requests and project bookkeeping as required.

ARTICLE 9
INSURANCE, INDEMNITY AND WAIVER OF SUBROGATION

- 9.1 Indemnity
- (1) The Contractor agrees to indemnify, hold harmless, and defend the Owner, Owner's representatives, from and against any and all claims for bodily injury and property damage caused directly or indirectly by the Contractor's operations under this Agreement.
 - (2) The Owner shall cause any other Contractor who may have a contract with the Owner to perform construction or installation work in the area where work will be performed under this agreement, to agree to indemnify the Owner and the Contractor and hold them

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harmless from all claims for bodily injury and property damage that may arise from the Contractor's operations. Such provisions shall be in a form satisfactory to the Contractor.

Loss Deductible Clause - Leon County shall be exempt from, and in no way liable for, any sums of money which may represent a deductible in any insurance policy except for the deductible for the Builder's Risk Policy. The payment of deductibles shall be the sole responsibility of the Contractor and/or subcontractor providing such insurance except for the deductible for the Builder's Risk Policy.

9.2 Contractor's Insurance

- (1) The Contractor shall not commence any construction work in connection with this Agreement until he has obtained all of the following types of insurance and such insurance has been approved by the Owner, nor shall the Contractor allow any subcontractor to commence work on his subcontract until all similar insurance required of the subcontractor has been obtained and approved.

All insurance policies shall be with insurers qualified and doing business in Florida.

- (2) Worker's Compensation Insurance - The Contractor shall take out and maintain during the life of this Agreement Worker's Compensation Insurance for all his employees connected with the work of this Project and, in case any work is sublet, the Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the Contractor. Such insurance shall comply with the Florida Worker's Compensation Law. In case any class of employees engaged in hazardous work under this contract at the site of the project is not protected under the Worker's Compensation statute, the Contractor shall provide adequate insurance, satisfactory to the Owner, for the protection of employees not otherwise protected.

- (3) Contractor's Public Liability and Property Damage Insurance - The Contractor shall take out and maintain during the life of this Agreement Comprehensive General Liability and Comprehensive Automobile Liability Insurance as shall protect him from claims for damage for personal injury, including accidental death, as well as claims for property damages which may arise from operating under this Agreement whether such operations are by himself or by anyone directly or indirectly employed by him, and the Amount of such insurance shall be minimum limits as follows:

- (a) Contractor's Comprehensive \$1,000,000 General Liability Coverage. Each Bodily Injury and Property Occurrence, Damage Combined Single Limit.
- (b) Automobile Liability Coverage, \$1,000,000 Bodily Injury and Property Damage. Each Occurrence, Combined Single Limit.

The Insurance clause for both BODILY INJURY AND PROPERTY DAMAGE shall be amended to provide coverage on an occurrence basis.

- (4) Contractor's Public Liability and Property Damage Insurance - The Contractor shall require each of his subcontractors to procure and maintain during the life of this subcontract, insurance of the type specified above or insure the activities of his subcontractors in his policy, as specified above.

- (a) Indemnification Rider

- (1) To cover to the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Owner's Representatives, and

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their agents and employees from and against any and all claims for damages, losses and expenses, including but not limited to reasonable attorney's fees, arising out of or resulting from Contractor's performance of the work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to, damage or destruction of personal or real property, and (2) caused in whole or in part by any act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them, or Anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right to obligation of indemnity which would otherwise exist as to any party or person described in this Article.

- (2) In any and all claims against the Owner or the Engineer or any of their agents or employees of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligations under this Paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under Worker's or Workmen's Compensation costs, disability benefits acts or other employee benefit acts.
- (3) The Contractor hereby acknowledges receipt of ten dollars and other good and valuable consideration from the Owner in exchange for giving the Owner the indemnification provided above.
- (b) **Builder's Risk Coverage** - The Contractor shall take out and maintain during the life of this Agreement a "Builder's Risk Policy" completed value form, issued to provide coverage on all "all risk" basis including theft. This coverage shall not be lapsed or canceled because of partial occupancy by the Owner prior to final acceptance of the Project.
- (c) **Certificate of Insurance** - The Owner shall be furnished proof of Coverage of Insurance as follows:

Certificate of Insurance form will be furnished to the Owner along with the Contract Documents. These shall be completed and signed by the authorized Resident agent. This Certificate shall be dated, signed and shall include the following:

- (1) The name of the insured Contractor, the specific job by name and job number, the name of the insurer, the number of the policy, its effective date, and its termination date.
- (2) Statement that the Insurer will mail notice to the Owner at least thirty (30) days prior to any material changes in provisions or cancellation of the policy.
- (3) Certificate of Insurance shall be in the form as approved by the County and such Certificate shall clearly state all the coverage required in this Section.
- (4) Leon County shall be named as an additional insured, subject to policy terms and conditions and only to the extent necessary to

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provide the coverage required by the agreement for liability assumed by the Contractor.

9.3 Waiver of Subrogation

- 9.3.1 The Owner and the Contractor waive all rights against each other, for damages caused by perils covered by insurance provided under to the extent covered by such insurance except such rights as they may have to the proceeds of such insurance held by the Owner and Contractor as trustees. The Contractor shall require similar waivers from all subcontractors and their sub-subcontractors.
- 9.3.2 The Owner waives subrogation against the Contractor on all property and consequential loss policies carried by the Owner on adjacent properties and under property and consequential loss policies purchased for the Project after its completion.
- 9.3.3 If the policies of insurance referred to in this Article require an endorsement to provide for continued coverage where there is a waiver of subrogation, the Owner of such policies cause them to be so endorsed, failure to obtain proper enforcement nullifies the waiver of subrogation.

ARTICLE 10
TERMINATION OF THE AGREEMENT AND
OWNER'S RIGHT TO PERFORM CONTRACTOR'S OBLIGATION

- 10.1 Termination by the Contractor - If the project is stopped for a period of thirty (30) days under an order of any court or other public authority having jurisdiction or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Contractor, or if the Project should be stopped for a period of sixty (60) days by the Contractor, for the Owner's failure to make payments thereon, then the Contractor may, upon fourteen (14) days written notice in advance to the Owner, terminate the contract and request payment for all work executed and the Contractor's fees earned to date and for any proven loss sustained, as of the date of termination, upon any materials, equipment, tools, construction equipment, and machinery, including reasonable profit and termination expenses incurred by the Contractor.
- 10.2 Owner's Right to Perform Contractor's Obligations and Termination by Owner for Cause.
- (1) If the Contractor fails to timely perform any of his obligations under this agreement including any obligation the Contractor assumes to perform work with his own forces, the Owner may, after seven (7) days written notice during which period the Contractor fails to perform such obligation, make good such deficiencies and perform such actions. The Total Price, or the actual cost of the Project, whichever is less, shall be reduced by the cost to the Owner of making good such deficiencies and the Contractor's construction Phase Fee and General Conditions Fee shall be reduced by an amount required to manage the making good of such deficiencies.
- (2) If the Contractor is adjudged bankrupt, or if he makes a general assignment for the benefit of his creditors or if a receiver is appointed on account of his insolvency, or if he persistently or repeatedly refuses or fails, except in case for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or fails, without being excused, to maintain an established schedule (failure to maintain schedule shall be defined as any activity on the critical path that fails 30 days or more behind schedule) which has been adopted by the Construction Team, or if he fails to make prompt payment to subcontractors for materials or labor, or disregards laws, rules, ordinances, regulations, or orders of any public authority having jurisdiction, or otherwise is guilty of substantial violations of a provision of the Agreement, then the Owner may, without prejudice to any

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other right or remedy, and after giving the Contractor and his surety, if any, seven (7) days written notice, and during which period Contractor fails to cure the violation, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor, and may finish the Project by whatever method the Owner may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Project is finished nor shall he be relieved from his obligations assumed. Reasonable termination expenses and costs incurred by the Owner may be deducted from any payments left owing the Contractor.

10.3 Termination by Owner without Cause.

- (1) If the Owner terminates this Agreement he shall reimburse the Contractor for any unpaid cost of the Project due him. The Owner shall also pay to the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment retained by Owner. In case of such termination the Owner further assumes and becomes liable for obligations, commitments and unsettled contractual claims that the Contractor has previously undertaken or incurred in good faith in connection with said Project to the extent same are accepted by Owner. The Contractor shall, as a condition of receiving the payments, execute and deliver all such papers and take all such steps including the legal assignment of Contractor's contractual rights, as the Owner may require for the purpose of fully vesting in Owner the rights and benefits of the Contractor under such obligations or commitments.

ARTICLE 11
ASSIGNMENT AND GOVERNING LAW

- 11.1 Neither the Owner nor the Contractor can assign their respective interests in this agreement without the express written consent of the other except as to the assignment of proceeds.
- 11.2 This Agreement shall be governed by the Laws of the State of Florida.

ARTICLE 12
NOTICE OF CLAIM: WAIVER OF REMEDIES

- 12.1 Liability for any claims arising out of or related to the subject matter of this contract, whether in contract or tort, including, but not limited to, claims for extension of construction time, for payment by the Owner of the costs, damages or losses because of changed conditions under which the works is to be performed, or for additional work, shall be governed by the following provisions:
 - (1) All claims must be submitted as a Request for Change Order in the manner as provided herein;
 - (2) The Contractor must submit a Notice of Claim to Owner and to the Engineer within 20 days of when the Contractor was or should have been aware of the occurrence of the event giving rise to the claim and;
 - (3) Within twenty (20) days of submitting its Notice of Claim, the Contractor shall submit to the Owner its Request for Changer Order, which shall include a written statement of all details of the claim, including a description of the work affected.

The Contractor agrees that the Owner shall not be liable for any claim that the Contractor fails to properly submit as a Request for Change Order as provided in this paragraph.

- 12.2 After receipt of a Request for Change Order, the Owner, in consultation with the Engineer, shall deliver to the Contractor within 20 days, after receipt of request, its written response to the claim.

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- 12.3 In the event the Owner and Contractor are unable to agree on the terms of the change order, the Owner shall have the option to instruct the Contractor to proceed with the work. In that event, the Owner shall agree to pay for those parts of the work, the scope and price of which are not in dispute. The balance of the disputed items in the order to proceed will be resolved after completion of the work.

ARTICLE 13
TERMINATION FOR CONVENIENCE

- 13.1 At any time during the performance of this contract the Owner, at its sole discretion, shall have the right to terminate the contract with or without cause being shown, and without regard to whether or not the Contractor has breached the contract. If the Owner elects to terminate the contract for convenience, he shall give the Contractor ten (10) days notice that he has elected to terminate the contract for convenience. In that event, the Contractor will be entitled to be paid for the labor and materials that he has supplied to the job, along with his overhead, profit and/or fee through the date of termination if applicable. If any of this overhead, profit and/or fee are stated in a fixed sum, the Contractor will be entitled to recover the amount which bears the same percentage as the cost of the work completed at the time of termination bears to the total contract price including adjustments through the date of termination.

13.2 **NON-WAIVER**

Failure to enforce or insist upon compliance with any of the terms or conditions of this Agreement or failure to give notice or declare this Agreement terminated shall not constitute a general waiver or relinquishment of the same, or of any other terms, conditions or acts; but the same shall be and remain at all times in full force and effect.

ARTICLE 14
MINORITY BUSINESS ENTERPRISE PARTICIPATION POLICY

It is the policy of the Leon County Board of County Commissioners to institute and maintain an effective Minority Business Enterprise Program. The Contractor acknowledges and agrees to support the following program goals:

1. Eliminate any policies and/or procedural barriers that inhibit M/WBE participation in our procurement process.
2. Establish goals designed to increase M/WBE utilization.
3. Provide increased levels of information and assistance available to M/WBEs.
4. Implement mechanisms and procedures for monitoring M/WBE compliance by prime contractors.

The Contractor firm shall meet or exceed the following MBE participation levels for construction and/or renovation on this project, except when the County Good Faith Committee approves an exception to any goal. The goals shall be as calculated to the cost of the work outlined in Article 6 and shall not be less than 21.01 percent of the total project cost.

The Contractor hereby agrees to establish a monthly reporting system of the work done by and payments made to certified minority business enterprises as a part of this project. The reports shall detail each invoice submitted to the County and a break down of payments to all subcontractors therein by M/WBE classification.

In the event that one of the designated MWBE firms is unable to perform the work as planned or the Contractor determines a need to replace any MWBE firm, prior approval to final action must be approved in writing by the Leon County MWBE Office. In the event that the Contractor cannot meet or exceed the

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contracted participation goal, the Contractor shall demonstrate, through a statement of "good faith", that every reasonable effort has been made to achieve the contractual percentage. Any "Good Faith Statement" provided by the Contractor shall follow the requirements of the Florida Statutes for good faith.

AGREEMENT FOR CONTRACTOR SERVICES BETWEEN LEON COUNTY, FLORIDA AND SANDCO, INC. FOR THE ORANGE AVENUE WIDENING PROJECT

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the day and year first above written above.

WHERETO, the parties have set their hands and seals effective the date whereon the last party executes this Agreement.

CONTRACTOR

WITNESS: _____ BY: _____
President

WITNESS: _____ DATE: _____

DATE: _____

(CORPORATE SEAL)

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 19 ____.

By _____, of _____
(Name of officer or agent, title of officer or agent) (Name of corporation acknowledging)

a _____ corporation, on behalf of the corporation.
(State or place of incorporation)

He/she is personally known to me or has produced _____ as
(type of identification)

Signature of Notary

Print, Type or Stamp Name of Notary

Title or Rank

Serial Number, If Any

**AGREEMENT FOR CONTRACTOR SERVICES BETWEEN LEON COUNTY, FLORIDA AND SANDCO,
INC. FOR THE ORANGE AVENUE WIDENING PROJECT**

LEON COUNTY, FLORIDA

BY: _____
Cliff Thael, Chairman
Board of County Commissioners

DATE: _____

ATTEST:
BOB INZER, CLERK OF THE COURT
LEON COUNTY, FLORIDA

By: _____

APPROVED AS TO FORM:
LEON COUNTY ATTORNEY'S OFFICE

By: _____
Herbert W.A. Thiele, Esq.
County Attorney